IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.460 OF 1992

The State of Maharashtra ...Appellant.

V/s

Madhukar Dharmaji Kale
Age 57 years, Occ: Service,
Residing at 42-A, Hanumannagar,
Shivajinagar, Pune-5. ...Respondent.

Mr. A.S. Shitole, APP for the State.

Mr. Prashant Patil holding for Mr. R.V. More for the respondent.

CORAM: V.M.KANADE,J.

DATE: 3rd February, 2005

ORAL JUDGMENT:

1. The State has preferred this appeal against the judgment and order passed by the Special Judge, Pune in Special Case No.10 of 1990. By the said Judgment and Order, the Trial Court acquitted the accused for an offence punishable under section 7 and 13(2) read with section 13(1)(d) of the Prevention of Corruption Act.

2. Prosecution case is that the complainant Narayandas Bhivraj Unecha was running one Grocery Shop and fair-price-shop in Plot No.336/2 and, thereafter, he had applied for a licence for running the said shop from the Pune Municipal Corporation. A notice was issued by the Corporation which was received by the

complainant on 4/6/1990 in which the complainant was asked to show cause why legal action should not be taken against him for running the shop without obtaining licence. Prosecution case is that two days after the receipt of the notice, the accused went to the shop of the complainant and asked him to meet him in his office. Accordingly, the complainant met the accused in the office. The accused demanded Rs 2000/- for not taking any action against him. This amount was reduced to Rs 1000/- after negotiations were made by the complainant. The complainant lodged a complaint with the Anti-corruption Bureau, Pune. The pre-trap panchanama was prepared. The accused was given tainted currency notes. On pre-arranged signal being given, the accused was apprehended and an offence was registered again him. The statements of different witnesses were recorded. The charge-sheet was filed against the accused. The Trial Court, however, acquitted the accused of the offence with which he was charged.

3. The learned APP appearing for the State has taken me through the evidence of 7 witnesses examined by the prosecution. From the evidence on record, it can be seen that the demand and acceptance by the accused has not been proved by the prosecution. It has come on

record that the accused did not have an authority to regularize any illegality committed by the complainant. Further, it can be seen from the evidence on record that no application has been made by the complainant seeking permission for the licence and, as such, no endorsement could have been made by the accused. Further, it has come on record that the complainant was already given the licence. It is difficult to accept the case of the complainant regarding the demand made by the accused particularly when the accused did not have an authority and was not competent to favour the complainant either for the purpose of obtaining licence or for not taking any action against him.

4. From the evidence of the complainant, it can be seen that there are number of discrepancies in his evidence which have been dealt with in great detail by the Trial Court. The Trial Court, after considering the evidence at length, has come to the conclusion that the prosecution has not proved beyond the reasonable doubt that the accused has committed the said offence. From the evidence of P.W.1, it can be seen that he was assigned the duty of controlling the licences, renewal of licences and to prosecute the defaulters. P.W. 2- Dr. Vijay Kumar has stated that

the accused was serving as Sanitary Inspector in Pune Municipal Corporation. He has also stated that on his directions, orders were passed by him on 23/5/1990, directing the applicant to stop his business. He has stated that on 19/3/1984, Mr. Unecha had submitted application in form A. This witness has admitted in his cross-examination that power to grant or refuse permission or licence should be exercised only by the Assistant Health Officer and not by the Sanitary Inspectors. P.W. 3 - Unecha is the complainant. In his evidence, he has stated that the panch witness was standing at the distance of 10 feet and that the accused No.2 asked him whether he had brought an amount and then he handed over the amount to the accused. It is difficult to rely on the evidence of this witness particularly when he had admittedly committed an illegality of running a Grocery Shop without licence for which he was also liable to be prosecuted under the provisions of the Prevention of Food and Adulteration Act. The accused neither had an authority nor power to grant or refuse to grant licence or to condone the lapse of the complainant. Except the complainant, no other person had heard the accused demanding money. In view of these discrepancies in the evidence of of the complainant, the Trial Court, in my view, has rightly given benefit

of doubt to the accused. This is not a case which would call for interference from this Court. Appeal is accordingly dismissed.

V.M. KANADE, J.